

CITY COUNCIL REPORT



Meeting Date: November 1, 2011
General Plan Element: *Economic Vitality*
General Plan Goal: *Sustain Scottsdale as a tourist destination*

ACTION

Horse-Drawn Carriage Rides. Adopt Resolution 8849 approving Revocable License Agreement 2011-123-COS with Terri Todd, sole proprietor, dba Scottsdale Horse and Carriage to provide free horse-drawn trolley and stagecoach rides in Downtown Scottsdale and exclusive use of the Livery Stable located at 3802 N. Brown Avenue.

BACKGROUND

Scottsdale has long been called "The West's Most Western Town". To support this image and promote tourism in our Downtown the city built and maintains a Livery Stable on the corner of Brown Avenue and 2nd Street. For the past five years staff contracted with a horse and carriage service to provide free horse-drawn carriage rides on Saturdays in the Old Town district and horse-drawn trolley rides in the Arts district during ArtWalk Thursday nights.

Scottsdale Horse and Carriage was the sole respondent in a competitive RFP process that closed on September 29, 2010 and has worked under a one year contract with four renewal options since that time. In investigating a contract renewal, the city's asset management department determined the need for City Council approval of this contract because the contractor is also granted exclusive rights to the Livery Stable. Before the first year expired the contractor approached the City and requested a rate increase due to a rise in operating costs and to extend the season. One notable difference between this contract and the contract entered into for 2010 is the vendor will be paid \$150 per shift rather than a flat yearly charge, allowing the contract administrator to closely monitor pay for performance and realize savings if applicable. Furthermore, the contract was amended limiting the option of a price increase to every other year.

In addition to the free rides, the contractor is allowed to operate a for-profit horse-drawn carriage operation out of the Livery Stable.

ANALYSIS & ASSESSMENT

Recent Staff Action

Economic Vitality Staff and Asset Management have researched hay prices, horse-drawn carriage prices, and other vendors in the area. Scottsdale Horse and Carriage is offering a valued service at a fair price.

RESOURCE IMPACTS

Available funding

This service is currently funded with the Downtown Group General Fund operating budget. This contract will be examined to determine if bed tax funding can be applied with future contract extensions.

Staffing, Workload Impact

There is no new workload impact with approval of this contract.

Maintenance Requirements

The exterior of the Livery Stable is maintained by Community Services and Facilities. The Contractor is responsible for all repair and maintenance of the interior of the Livery Stable, pursuant to section 5.2 of the contract.

Cost Recovery Options

Currently these horse-drawn carriage rides are provided free of charge to the public in an effort to boost tourism. Should the City decide move to a fee based service, the impact would need to be evaluated.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 8849 approving Revocable License Agreement 2011-123-COS with Terri Todd, sole proprietor, dba Scottsdale Horse and Carriage to provide free horse-drawn trolley and stagecoach rides in Downtown Scottsdale and exclusive use of the Livery Stable.

Description of Option B

Do not adopt Resolution 8849 and eliminate this service in Downtown Scottsdale.

RESPONSIBLE DEPARTMENT(S)

Business and Economic Vitality; Asset Management

STAFF CONTACTS (S)

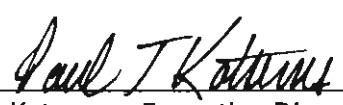
Rachel Smetana, Downtown Business Specialist, 480-312-2459

APPROVED BY


Rob Millar, Strategic Programs Manager

480-312-2533, rmillar@scottsdaleaz.gov

10-17-11
Date


Paul T. Katsenes, Executive Director

480-312-2890, pkatsenes@scottsdaleaz.gov

10-17-11
Date

ATTACHMENTS

1. Resolution 8849
2. Contract 2011-123-COS

RESOLUTION NO. 8849

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE,
MARICOPA COUNTY, ARIZONA, AUTHORIZING REVOCABLE
LICENSE AGREEMENT NO. 2011-123-COS WITH TERRI TODD, DBA
SCOTTSDALE HORSE AND CARRIAGE.

The City desires to provide horse-drawn trolley and stage coach services in downtown Scottsdale; and

The City is the owner of a building known as the Livery Stable and as a part of the horse-drawn trolley and stage coach services, the City desires to make the Livery Stable available to the Contractor as a part of providing these services.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Revocable License Agreement No. 2011-123-COS with Terri Todd, dba Scottsdale Horse and Carriage.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 1st day of November, 2011.

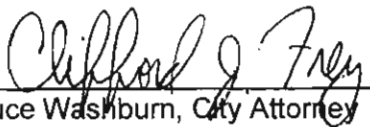
ATTEST:

CITY OF SCOTTSDALE
An Arizona municipal corporation

Carolyn Jagger, City Clerk

W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: Clifford J. Frey
Senior Assistant City Attorney



**CITY OF SCOTTSDALE
CITY SERVICES
AND
REVOCABLE
LICENSE AGREEMENT**

THIS AGREEMENT, entered into this _____ day of _____, 2011, by and between the City of Scottsdale, an Arizona Municipal Corporation, the "City", and Terri Todd, sole proprietor, dba Scottsdale Horse and Carriage, the "Contractor".

WITNESSETH

The City desires to enter into an Agreement for horse-drawn trolley and stage coach services in downtown Scottsdale; and

The City is the owner of a building situated on a parcel of real property located at 3802 N. Brown Ave., Scottsdale, Arizona comprising approximately 3125 square feet; and

The City has constructed a Livery Stable in the south approximately 1737 square feet of this building; and

As a part of this City Services Agreement for horse-drawn trolley and stage coach services, the City desires to make this Livery Stable available to the Contractor as a part of the Contractor's compensation for providing these services; and

The Contractor will also be permitted to operate a for-profit horse-drawn carriage operation out of the Livery Stable, all in accordance with the terms and conditions of this Agreement; and

After a solicitation process, the Contractor has been determined to be the most qualified to perform the requested non-professional services.

IN CONSIDERATION of the mutual promises and obligations, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

The Contractor will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the services required by this Agreement.

1.1 SERVICE DESCRIPTION

All provisions of the Specifications for Request for Proposal No. 2010-159-COS, identified as the Downtown Horse-Drawn Trolley and Stage Services, is incorporated by this reference and made a part of this Agreement. The Contractor's Proposal submitted

in response to Request for Proposal Number 2010-159-COS, and dated September 29, 2010, is incorporated by this reference and made a part of this Agreement. If any provision incorporated by reference from the General Terms and Conditions or the Specifications conflicts with any provision of the Contractor's proposal, the provision of the General Terms and Conditions and the Specifications will control. If any provision of the Contractor's Proposal conflicts with any provision of this Agreement, this Agreement will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Contractor for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Agreement are to be and will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Contractor.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. The Contractor must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make these materials available for audit by the City in accordance with Section 4.5 of this Agreement.

2.2 FEE SCHEDULE

Contractor will be paid, during each annual term of this Agreement, a not to exceed sum of \$6,500.00, payable 30 days after submission of an invoice showing the number of shifts worked during that previous 30 day period to the Contract Administrator and approval of payment by the Contract Administrator. This sum will be paid based on the number of "shifts" the Contractor completes, payable at the rate of \$150.00 per shift. A shift is defined as a 2-hour period on Thursdays and a 3-hour period on Friday/Saturday. During each "shift," the Contractor will be fully operational as required by the terms of this Contract. The Contractor will keep adequate records of each shift worked and submit these records at the end of each pay period to the Contract Administrator for approval prior to the City making payment. Amounts indicated in this Section 2.2 together with the License to Use the Livery Stable represent the entire amounts payable under this Agreement. Additional expenses will not be authorized.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of the Agreement will be for a 1 year period. The City and the Contractor may mutually agree to extend this Agreement for a maximum of 3 additional 1 year periods, upon the recommendation of the Contract Administrator, and concurrence of the Asset Management Coordinator. The fee to be paid by the City for each 1 year extension will be the same as provided in Section 2.2 or as may be adjusted in accordance with the provisions of Section 3.4.

In the event that any shift work remains incomplete after the specified completion time period, continuation of this Agreement will be subject to written approval by the Contract Administrator.

3.2 TERMINATION

Termination for Convenience: The City reserves the right to terminate this Agreement or any part of this Agreement for its sole convenience with 30 days written notice. In the event of any termination, the Contractor must stop all work on the termination date, and must immediately cause any of its suppliers and Subcontractors to cease all work. As compensation in full for services performed to the date of any termination, the Contractor will receive a fee prorated for the number of shifts actually completed. The City will make this final payment within 30 days after the date of termination. The Contractor will not be paid for any work done after the termination date, nor for any costs incurred by the Contractor's suppliers or Subcontractors, which Contractor could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Agreement or any part of this Agreement with 7 days notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this Agreement. Events of default include those events as described in Section 6.1 in addition to those events described in this Section. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to cancel this Agreement for cause. In the event of cancellation for cause, the City will not be liable to the Contractor for any amount after the cancellation date, and the Contractor will be liable to the City for any and all damages sustained by reason of the default which gave rise to the cancellation.

In the event the Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this Agreement immediately upon giving notice to the Contractor.

If the City improperly cancels the Agreement for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.2.

3.3 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Agreement and pay for charges under this Agreement, the City may terminate this Agreement at the end of the current fiscal period. The City agrees to give written notice of termination to the Contractor at least 30 days before the end of its current fiscal period and will pay to the Contractor all approved charges incurred through the end of this period.

3.4 PRICE ADJUSTMENTS

Price increases may only be requested by the Contractor every other year during the term of the Contract, and may only be requested 30 days before the annual anniversary date of the Agreement. Failure to do so may result in the denial of any increase requested.

Price increases will become effective only after approval by the Contract Administrator and the Asset Management Coordinator and will be effective for at least 1 year from the date of approval.

The increased rate will be based upon mutual consent of the Contractor and the Contract Administrator, however, the Contract Administrator must evaluate the Contractor's performance, services and records documentation to determine the appropriateness of the increase requested.

4.0 REVOCABLE LICENSE

4.1 LIVERY STABLE

The Contractor is, by this Agreement, granted a revocable license in the south approximately 1,737 square feet in the area known as the "Livery Stable," and depicted on the Site Plan attached as Exhibit "A". The Livery Stable is in the south end of the building located at 3802 N. Brown Ave., Scottsdale, Arizona. This license also includes the non-exclusive right for pedestrian, equestrian and equestrian support vehicle access to and from the licensed Livery Stable. This portion of the Livery Stable will be used exclusively in the course of conducting a horse-drawn trolley, stage coach and carriage business. The Contractor will not use or permit the use of the Livery Stable for any other purpose without the written consent of the Contract Administrator.

The Permitted Uses in the Livery Stable are further restricted as follows:

No alcohol is permitted at the Livery Stable.

Only the Contractor and its employees are allowed within the Livery Stable.

4.2 CITY'S RESERVATION

The City specifically reserves and excludes from this Revocable License, the approximately 1,388 square feet of space on the north end of the building depicted on the Site Plan, Exhibit "A," as the "Museum Area," together with the City's non-exclusive rights over the entire Livery Stable for the exercise of the City's rights to the entire

building under the terms of this Agreement and for any and all purposes that do not, in the City's reasonable discretion, materially interfere with the Contractor's lawful conduct of the permitted uses under this Agreement.

4.3 RECONFIGURATION

The City has the unilateral right to modify the configuration of the Livery Stable from time to time during the term of this Agreement. Any relocation of existing improvements required by the City's reconfiguration will be at the City's expense. The City may also unilaterally regulate, reroute and otherwise alter pedestrian and vehicular traffic access to the Livery Stable without the Contractor's consent. However, the City agrees that any new configuration will reasonably accommodate the Contractor's operations.

4.4 CONDITION OF LIVERY STABLE

The Contractor has examined, studied and inspected the Livery Stable provided under this Agreement and its environs and understands that this Revocable License is for the use of property in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to its condition or fitness for any use. The Contractor has obtained any information and professional advice as the Contractor has determined, in its sole judgment, to be necessary as related to this Agreement.

The Livery Stable includes no fixtures or personal property owned by the City. Any and all of the City's property that may come into the possession of the Contractor must be immediately returned to the City by the Contractor. The Contractor may not alter or remove in any way any improvements or fixtures within the Livery Stable or any personal property owned by the City.

4.5 LICENSE CONSIDERATION

The Contractor's performance of the covenants of this City Services and Revocable License Agreement is consideration for the Contractor's use of the Livery Stable and for the Contractor's performance of its other obligations under this Agreement.

Within 15 days following the end of each month, and as a part of conducting its operations under the terms of this Agreement, the Contractor will submit a report to the Contract Administrator detailing activity that includes but may not be limited to the following: (1) days of operation; (2) hours of operation each day; (3) number of trolleys, stage coaches, and carriages used each day; (4) number of rides given each day; and (5) number of passengers per ride.

4.6 ANIMALS

No animals are allowed at the Livery Stable other than horses, mules and donkeys, except as provided in this Section. Seeing-eye dogs and similar animals providing health assistance to disabled persons will be allowed, as well as not more than 2 dogs used by the Contractor as a part of the free-to-the-public trolley/stage coach rides. No animal having directly caused any property damage or injury will be allowed. All of the Contractor's horses, mules and donkeys worked as a part of this Agreement must be in

good health and must have all necessary and appropriate inoculations and boosters necessary to assure continuing protection for each animal worked as a part of this Agreement. The appropriate inoculations and boosters are those recommended by a licensed veterinarian familiar with large animal diseases that can be contracted in the geographical area of Maricopa County, Arizona and the areas from which the animals are or have been transported, including but not limited to the West Nile Virus. The Contract Administrator has the right to request evidence of inoculations and boosters at any time, and the Contractor must produce the necessary evidence verifying the inoculations and boosters within 24 hours after the request.

4.7 NIGHTTIME USE

No animals of any kind are allowed in the Livery Stable between the hours of 2:00 a.m. and 9:00 a.m. on any day of the week. The Contractor will not store any personal property at the Livery Stable that is not directly required to carry out the terms of this Agreement. The City assumes no responsibility for the Contractor's personal property left in the Livery Stable and the Contractor will lock all of the Contractor's personal property within the Livery Stable.

4.8 REQUIRED OPERATIONS

During the term of this Agreement, the Contractor will provide livestock, equipment and employees at the Livery Stable offering free-to-the-public horse-drawn trolley rides during the Thursday evening Art Walks in Downtown Scottsdale from 7:00 p.m. to 9:00 p.m. during the months of November through April with one occurrence in October of each year. The trolley route is as depicted in Exhibit "B", attached and by reference made a part of this Agreement. During the term of this Agreement, the Contractor will also provide free-to-the-public horse-drawn stage coach rides on Fridays and Saturdays from 1:00 p.m. to 4:00 p.m. during the months of January through March. The stage coach route is depicted in Exhibit "C", attached and by reference made a part of this Agreement. No advertising of any kind, other than City sponsored events, will be permitted on the trolley or stage coach during the free-to-the public rides. No passengers will be allowed to ride on top of the coach with the driver at any time.

During the term of this Agreement, the Contractor will also provide for-profit carriage rides to the public on the public streets in the vicinity of the Livery Stable with services adequate to meet the public demand during the months of October through April. The parties agree that the months of May through September may be too climatically hot to operate the horse-drawn vehicles. Operations by the Contractor during May through September will be at the Contractor's discretion. During the term of this Agreement, no advertising of alcohol, tobacco, bars, massage facilities, gambling casinos, gun shops, sexually oriented businesses, manufacturers or sellers of firearms or weapons will be permitted on any of Contractor's carriages, stage coaches or trolleys.

4.9 NOISE

No sound equipment will be operated at the Livery Stable. All vehicles and other equipment operated by the Contractor must be equipped with appropriate mufflers and other sound control devices. Any violation of this section may be considered a "Disorderly Conduct Violation" by the City.

4.10 NONEXCLUSIVE USE

The Contractor understands and agrees that the City and other vendors or persons within and without the surrounding vicinity of the Livery Stable may conduct, from time to time, business activities that may be in direct competition with the Contractor. The Contractor has no exclusive right to conduct any activity, including without limitation, horse-drawn vehicle operations, whether free to the public or for profit.

4.11 MANAGEMENT OF OPERATIONS

The Contractor will operate its horse-drawn business and the Livery Stable in a first-class manner, will furnish prompt, clean and courteous service; and will keep the Livery Stable orderly, clean and sanitary and in an inviting condition at all times, all to the satisfaction of the City. The Contractor will not employ any person or persons in or about the Livery Stable or on its horse-drawn vehicles who fails to be clean, courteous, efficient and neat in appearance or who uses improper, obnoxious or rude language or act in a loud, boisterous or otherwise improper manner. The Livery Stable must be cleaned on at least a daily basis so as to remove all manure, soiled straw and other evidence of animal usage and so as, to the fullest extent possible, to eliminate odors, all to the satisfaction of the City.

4.12 FAMILY ATMOSPHERE

It is the foremost desire of the City and the Contractor to provide the public with a horse-drawn operation that has a family atmosphere, devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, partially nude, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of any description or to any degree in the horse-drawn operations or at the Livery Stable.

The Contractor acknowledges that the requirements of this Section are independent of and in addition to any zoning or other governmental regulation affecting the Contractor's operations or the use of the Livery Stable. Any breach of this Section by any person using the Livery Stable or involved in or about the Contractor's horse-drawn operations or otherwise connected with the Contractor's operations in accordance with the terms of this Agreement will be considered a "Disorderly Conduct Occurrence" by the City and a breach of this Agreement. The Contractor will immediately cause the removal from the Livery Stable or any horse-drawn vehicle and any other related operations, any person who commits or who causes, directs or encourages any person to commit, a Disorderly Conduct Occurrence. To that end, all of the following apply:

4.12.1 The Contractor's employees and other agents must be clothed with dry, opaque clothing meeting the following standards:

4.12.1.1 The front and back of pants, shorts or skirts must reach down to a point no higher than 4 inches above the top of the kneecap.

4.12.1.2 All employees and other agents must wear shirts with sleeves covering the shoulders.

4.12.1.3 Bare midriffs are not allowed.

4.12.2 The Contractor will immediately cause to be removed any person (including without limitation any of the Contractor's customers) who:

4.12.2.1 Appears to be intoxicated or under the influence of any narcotic or chemical substance.

4.12.2.2 Commits any act of violence.

4.12.2.3 Acts in a loud or unusually boisterous manner.

4.12.2.4 Threatens to harm or harms any person, animal or property.

4.12.2.5 Uses profanity which can be readily heard by users of the Livery Stable or the public.

4.12.2.6 Violates any law or any regulation applicable to the horse-drawn vehicle operation.

4.13 CARRIAGE USE

No more than 4 carriages may be present at or operate from the Livery Stable. All carriages, trolleys and stage coaches must be parked so as not to interfere with the City's use of the remaining building. The City and the Contractor will work in good faith to resolve any conflicts.

4.14 COMMON AREAS

There will be absolutely no activity or storage, however temporary, in the halls, steps, porches or other areas within or surrounding the Livery Stable. The Contractor will immediately clean up any spills or debris caused by the Contractor's suppliers or customers. The doors and gates of the Livery Stable will remain closed at all times except during actual use.

4.15 PARKING

The Contractor will park in compliance with all current and future laws and regulations. The City is providing no dedicated parking for the Contractor as a part of this Agreement. The Contractor may obtain permitting for parking on 2nd Street at the Livery Stable for a maximum of 2 vehicle spaces. It is the responsibility of the Contractor to obtain any necessary parking permits.

4.16 HAZARDOUS MATERIALS

The Contractor will not produce, dispose, transport, treat, use or store any hazardous waste or material or toxic substance upon or about the Livery Stable or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. §49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et.seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et.seq. or any other

federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). The Contractor will not use the Livery Stable in any manner inconsistent with regulations issued by the Arizona Department of Health Services or any other governmental agency. The Contractor will pay, indemnify, defend and hold the City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Livery Stable occurring after the date of this Agreement. The Contractor must immediately notify the City of any Toxic Substance at any time discovered or existing within the Livery Stable. The Contractor understands the hazards presented to persons, property, animals and the environment by dealing with Toxic Substances. The Contractor must cause any on-site or off-site storage, treatment, transportation, disposal or other handling of Toxic Substance by the Contractor in connection with the Livery Stable to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed and otherwise permitted to perform these services.

4.17 PROHIBITED NAMES

The Contractor will not use in connection with its operations, any name associated with products or vendors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.18 BUSINESS NAME

The Contractor may operate from the Livery Stable under the Contractor's name given at the beginning of this Agreement, or if that name is not available or if the City and the Contractor agree otherwise, any other name the City may approve in the City's reasonable discretion.

5.0 MAINTENANCE BY THE CITY

The City will have all responsibilities for the exterior maintenance and repair of the Livery Stable and the entire building in which the Livery Stable is located during the term of this Agreement. The City is responsible to maintain the structural integrity of the building, including the Livery Stable, exterior windows, exterior doors, roof, exterior walls, sewers, and plumbing within or serving the Livery Stable.

5.1 UTILITIES

The City will pay for all Utility services including all electric, water, sewer and solid waste services. The Contractor will be solely responsible for paying for any and all telephone, fax and computer connections to the Livery Stable during the term of this Agreement.

5.2 MAINTENANCE BY THE CONTRACTOR

The Contractor will, at all times, repair and maintain the interior of the Livery Stable and all related facilities at the Contractor's sole expense in a first-class, sound, clean and attractive manner, as determined in the City's reasonable discretion. By way of example and not limitation, the Contractor will be responsible for the following minimum requirements:

5.2.1 Adequate and sanitary handling and disposal, away from the Livery Stable, of all trash, garbage, manure and other refuse related to the Contractor's use of the Livery Stable. Without limitation, the Contractor will provide and use suitable covered receptacles for all trash and other refuse. Piling of boxes, cartons, barrels or other items outside the Livery Stable or in a manner visible from outside the Livery Stable or in a manner visible to areas open to the public is prohibited. The area in which trash containers are stored will be kept clean and free of all trash and debris and will be shielded from public view.

5.2.2 Litter pickup for the Livery Stable and for all real property within 10 feet of the Livery Stable.

5.2.3 Janitorial and all other cleaning services in the Livery Stable.

5.2.4 Cleanup and removal of all manure at the end of each day the Contractor uses the Livery Stable or more frequently as may be required to comply with all provisions of this Agreement.

5.2.5 All other repairs and maintenance of the Livery Stable not specifically required to be performed by the City.

6.0 BREACH BY THE CONTRACTOR

The Contractor must comply with, perform and do each performance and thing required of the Contractor under the terms of this Agreement and the Contractor's failure to do so will be a breach by the Contractor of this Agreement.

6.1 EVENTS OF DEFAULT

This entire Agreement is made upon the condition that each and every one of the following events will be considered an "Event of Default" and a material breach by the Contractor of the Contractor's material obligations under this Agreement.

6.1.1 If the Contractor abandons the Livery Stable.

6.1.2 If any environmental, health or similar inspector issues any notice of investigation or violation of health, environmental or similar regulations in connection with Contractor's use of the Livery Stable or determines during any two or more consecutive inspections that the same deficiency has been repeated or that the overall operation falls materially below standards for first rate well operated similar facilities in Maricopa County.

6.1.3 If any assignment of any of the Contractor's property is made for the benefit of creditors.

6.1.4 If any representation or warranty made by the Contractor in connection with this Agreement, the response to the RFP or the negotiations leading to this Agreement proves to have been false in any material respect when made.

6.1.5 If the Contractor fails to observe and comply with all bidding requirements of the City with respect to this Agreement and with all performances promised by the

Contractor with respect to the Contractor's response to the RFP. Any representations, warranties, promises or performances made by the Contractor in connection with this bid are in addition to the other requirements of this Agreement and are incorporated as requirements of this Agreement.

6.1.6 If the Contractor fails to timely pay any taxes or other amounts required to be paid by the Contractor to any third person.

6.1.7 If the Contractor consistently fails to observe and comply with the terms and conditions of this Agreement and all performances required by this Agreement.

6.1.8 If the Contractor consistently fails and refuses to comply with the reasonable requirements and requests of the Contract Administrator.

6.1.9 If the Contractor fails to obtain or maintain any licenses, permits, or other governmental approvals from the City or any other governmental body or timely pay any taxes with respect to this Agreement or the Livery Stable.

6.1.10 If there occurs a Disorderly Conduct Offense and this Disorderly Conduct Offense is not cured immediately upon demand by the City. The City may make demands related to Disorderly Conduct Offenses either orally in person, or by telephone, or by the notice provisions of this Agreement, or in any manner that gives the Contractor or Contractor's on site manager or person in charge of a horse-drawn vehicle actual notice of the City's objection to any Disorderly Conduct Offense.

6.1.11 If there occurs 3 Disorderly Conduct Occurrences, as described in Section 4.12, within any 12 month period, regardless of any demands made or not made by the City regarding the same.

6.1.12 If the Contractor fails (or neglects) to do or perform or observe any other provisions of this Agreement on its part to be kept or performed and this failure or neglect continues for a period of 30 days after the City has notified the Contractor in writing of the Contractor's default.

6.1.13 If the Contractor persists in a pattern of repeated failure (or neglect) to do or perform or observe any provision contained in this Agreement.

6.2 CITY'S REMEDIES

Upon the occurrence of any Event of Default or at any subsequent time, the City may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at the City's option:

6.2.1 The City's right to terminate this Agreement for any Event of Default is specifically provided for and agreed to. Cancellation of this Agreement due to the Contractor's breach or for any other reason does not end the Contractor's obligations arising before or simultaneous with, or attributable to, the termination or in any way terminate any of the Contractor's liability related to any breach of this Agreement.

6.2.2 Without demand or notice, enter into and upon the Livery Stable or any part of the Livery Stable, and repossess the same, and expel the Contractor and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being considered guilty of trespass and without prejudice to any other remedy. Any and all property that is removed from the Livery Stable by the City in accordance with the authority granted by this Agreement or Arizona law may be handled, removed, and stored by or at the direction of the City at the sole risk, cost, and expense of the Contractor, and the City will not be responsible for its value, preservation, or safekeeping. The Contractor will pay to the City, upon demand, any and all expenses and storage charges incurred in the removal.

6.2.3 Pay or perform, for the Contractor's account and at the Contractor's expense, any or all payments or performances required to be paid or performed by the Contractor.

6.2.4 Abate at the Contractor's expense any violation of this Agreement.

6.2.5 Pursue at the Contractor's expense any and all other remedies, legal or equitable, to which the City may be entitled.

6.2.6 Refuse, without any liability to the Contractor, to perform any obligation imposed on the City by this Agreement.

6.2.7 Be excused from further performance under this Agreement.

6.2.8 Insist upon the Contractor's full and faithful performance under this Agreement during the entire remaining term of this Agreement.

6.2.9 Assert or exercise any other right or remedy permitted by law.

6.3 NOTICE OF BREACH

The Contractor will promptly give notice to the City of any event or circumstance which is (or which with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

6.4 NON-WAIVER

The Contractor acknowledges Contractor's unconditional obligation to comply with this Agreement. No failure by the City to demand any performance required of the Contractor under this Agreement, and no acceptance by the City of any imperfect or partial performance under this Agreement, will excuse that performance or impair in any way the City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by the City of other performances will be considered a compromise or settlement of any right the City may have for additional or further performances. Any waiver by the City of any breach of condition or covenant to be kept and performed by the Contractor will not be considered as a continuing waiver and will not operate to bar or otherwise prevent the City from declaring a default for any breach or succeeding breach either of the same condition or covenant or otherwise. No statement, bill or notice by the City concerning payments or other performances due will excuse the Contractor from compliance with this Agreement nor estop the City (or

otherwise impair the City's ability) to at any time correct any notice or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) will be effective against the City unless made in writing by a duly authorized representative of the City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. THE CONTRACTOR EXPRESSLY DISCLAIMS AND WILL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS SECTION.

6.5 REIMBURSEMENT OF THE CITY'S EXPENSES

The Contractor will pay to the City upon demand any and all amounts expended or incurred by the City in performing the Contractor's obligations.

6.6 INSPECTION

The City will have access to the Livery Stable at all times for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Livery Stable or exercising the City's other rights. The Contractor will promptly undertake appropriate action to rectify any deficiency (identified by the City during these inspections or otherwise) in the Contractor's compliance with this Agreement. This section does not limit the City's other rights of access to the Livery Stable found elsewhere in this Agreement or otherwise. The Contractor will at all times and without request provide to the City a set of keys to all equipment and to all buildings, rooms or other enclosures used by the Contractor.

6.7 DEFAULT BY THE CITY

Despite anything in this Agreement to the contrary, in the event the City at any time is required to pay to the Contractor any amount or render any performance, this amount or performance is not due until 30 days after notice by the Contractor to the City that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, the City will not be in default so long as the City commences cure during the period and diligently prosecutes the cure to completion provided the cure must be completed within 60 days after it is due.

7.0 THE CITY AND THE CONTRACTOR'S RIGHT TO CANCEL

This Agreement may be canceled as follows:

7.1 THE CONTRACTOR'S RIGHT TO CANCEL

The Contractor will have the unilateral right to terminate this Agreement without cause upon 6 months written notice. The preceding sentence does not apply at any time to an event of default by the Contractor that has occurred (or an event has occurred which will be a default after passage of time or giving of notice). During the 6 month period, the Contractor will continue performing under this Agreement.

8.0 RIGHTS OF CANCELLATION

Cancellation of this Agreement due to the Contractor's breach or for any other reason does not end the Contractor's obligations arising before or simultaneous with, or attributable to, the cancellation or in any way end any of the Contractor's liability related to any breach of this Agreement.

8.1 DELIVERY OF POSSESSION

The Contractor will, at the expiration of the term or upon any sooner termination or cancellation, without demand, peaceably and quietly quit and deliver up the Livery Stable to the City thoroughly cleaned, in good repair, maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the same now are or in any better condition as the Livery Stable may subsequently be placed by the Contractor or the City.

9.0 DAMAGE TO OR DESTRUCTION OF LIVERY STABLE

If the Livery Stable is partially damaged by fire, explosion, the elements, the public enemy, or other casualty, the City will in its sole discretion, decide whether to restore the Livery Stable. In any event, where the City decides to restore the Livery Stable, the work will be performed with due diligence and at the City's sole cost and expense. If the damage is so extensive as to render the Livery Stable untenable, this Agreement may be terminated by the City.

10.0 THE CONTRACTOR'S RECORDS

The Contractor will maintain in a secure and fixed place at the Livery Stable or elsewhere within Maricopa County, Arizona proper and accurate records relating in any manner to this Agreement and to all of the Contractor's obligations. The Contractor will maintain a standard, modern system of accounting and will keep and maintain all books and records in accordance with generally accepted accounting principles applied on a consistent basis.

10.1 SUPPLEMENTAL INFORMATION

The Contractor will furnish, from time to time, any additional financial and other information as the City may reasonably request pertaining to the Contractor's and the City's respective rights and obligations with respect to this Agreement as reasonably determined by the City.

10.2 RIGHT OF INSPECTION

So long as the same will be pertinent to this Agreement or any transactions contemplated by this Agreement and, in any event, for a period extending at least 3 years after termination of this Agreement, the Contractor will at its expense (i) permit and assist the City and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, the Contractor's facilities, activities and records, (ii) cause its employees, agents and accountants to give their full cooperation and assistance in connection with any visits of inspection, (iii) make available any further information

concerning the Contractor's business and affairs relating to the Livery Stable as the City may from time to time reasonably request, and (iv) make available to the City at the Livery Stable (or other location requested by the City) reasonable accommodations for the City audit and inspection. Any inspection will be limited to matters relevant to the City's and the Contractor's rights and obligations under this Agreement as reasonably determined by the City.

10.3 RECORDS INCLUDED

The records of the Contractor subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computerized records, invoices, cash register tapes and similar records, contracts, commitments, arrangements, notes, daily diaries, ledgers, correspondence, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources and repositories of information and matters that may in the City's reasonable judgment bear on any matters, rights, duties or obligations under or covered by this Agreement or any performance. This section does not obligate the Contractor to provide the City access to records that are unrelated to the Contractor's and the City's rights and obligations under this Agreement.

11.0 COMPLIANCE WITH LAW

The Contractor will conduct only lawful operations at and from the Livery Stable in accordance with all Federal, State, County and City laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. The Contractor acknowledges that this Agreement does not constitute, and the City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to the Contractor with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or subsequently imposed by the City of Scottsdale or any other governmental body upon or affecting the Contractor, the Livery Stable, or the Contractor's use of the Livery Stable.

The Contractor acknowledges that all of the Contractor's obligations under this Agreement are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to the Contractor. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, the Contractor expressly repudiates all benefits with respect to performances rendered under this Agreement. The Contractor further agrees that this Agreement is not intended to diminish any performances to the City that would be required of the Contractor by law if this Agreement had been made between the Contractor and a private citizen.

This Agreement is not intended in any way to impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way the Contractor or the Livery Stable. The Contractor promises to comply with all applicable laws. The City's rights and remedies for breach of any promise supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. Without limiting in any

way the generality of the foregoing, the Contractor will have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. The City will have the right from time to time to require that all of the foregoing payments be made by the Contractor through the City. The Contractor will pay all sales, transaction privilege, and similar taxes.

12.0 GENERAL TERMS

12.1 ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.

12.2 ARIZONA LAW

This Agreement is governed and interpreted according to the laws of the State of Arizona.

12.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Agreement must be in writing and will be effective only after approval of all parties signing the original Agreement.

12.4 ASSIGNMENT

Services covered by this Agreement will not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

12.5 SUCCESSORS AND ASSIGNS

This Agreement extends to and is binding upon Contractor, its successors and assigns, including any individual, company, partnership or other entity with or into which Contractor merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Contractor sells its assets.

12.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City is Rachel Smetana or designee. The Contract Administrator will oversee the execution of this Agreement, assist the Contractor in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the Agreement requirements. The Contractor will channel reports and special requests through the Contract Administrator.

12.7 RECORDS AND AUDIT RIGHTS

Contractor's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this Agreement are open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Contractor or any of his payees in accordance with the terms of the Agreement. The City's authorized representative must be given access, at reasonable times and places, to all of the Contractor's records and personnel in accordance with the provisions of this Section throughout the term of this Agreement and for a period of 3 years after last or final payment.

Contractor must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section by insertion of this Contract requirements in a written Agreement between Contractor and payee. These requirements will also apply to any and all Subcontractors.

If an audit in accordance with this Section, discloses overcharges, of any nature, by the Contractor to the City in excess of 1% of the total Agreement billings, the actual cost of the City's audit will be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any audit or inspection of the Contractor's invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

12.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

12.9 INELIGIBLE BIDDER

Reserved.

12.10 INDEPENDENT CONTRACTOR

The services the Contractor provides under the terms of this Agreement to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from these contractual payments. As a result of this, the Contractor may be subject to I.R.S. provisions for payment of estimated income tax. The Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

12.11 CONFLICT OF INTEREST

The City may cancel any Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City's departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when written notice from the City is received by all other parties to the Agreement, unless the notice specifies a later time (A.R.S. §38-511).

12.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Agreement must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Contractor:

Terri Todd
Dba Scottsdale Horse and Carriage
10022 E. Cortez Drive
Scottsdale, Ariz. 85260

In the case of City:

City of Scottsdale
Rachel Smetana
Contract Administrator
4027 N. 75th Street
Scottsdale, Arizona 85251
(480) 312-2459

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

12.13 FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

12.14 TAXES

Contractor will be solely responsible for any and all tax obligations which may result from the Contractor's performance of this Agreement. The City will have no obligation to pay any amounts for taxes, of any type, incurred by the Contractor.

12.15 ADVERTISING

No advertising or publicity concerning the City using the Contractor's services will be undertaken without first obtaining the written approval for the advertising or publicity from the City Contract Administrator.

12.16 COUNTERPARTS

This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement will be considered to possess the full force and effect of the original.

12.17 CAPTIONS

The captions used in this Agreement are solely for the convenience of the parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

12.18 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the Agreement. If any changes increase or decrease the amount due under the Agreement documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Agreement Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

12.19 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it.

12.20 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Agreement and may subject the Contractor or Subcontractor to penalties up to and including termination of this Agreement or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to

assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Agreement by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Agreement to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

12.21 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS*

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded an Agreement and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a Agreement with the City you are agreeing that if you are selected as the awardee and meet the criteria as a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation in proof of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona non-operating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before issuing any Agreement.

If you have previously done business with the City and already have filed the above Affidavit with copies of an acceptable documentation please indicate date of submittal. If your acceptable Affidavit is already on file with the City, that filing satisfies this requirement.

If you fail to complete and provide a completed Affidavit and accompanying acceptable copy of your documentation, or do not advise us of your previous filing within 10 calendar days of the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/vendors.asp> on the Vendor Resources page at the bottom right under Forms.

12.22 AGREEMENTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

12.23 INDEMNIFICATION

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Agreement, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

Insurance provisions stated in this Agreement are separate and independent from the indemnity provisions of this paragraph and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

12.24 NO REAL PROPERTY INTEREST

Despite any provision of this Agreement to the contrary, and any negotiation, correspondence, course of performance or dealing, or other statements or acts by the Parties, the Contractor's rights are limited to the Livery Stable and the Contractor's rights in the Livery Stable are limited to the license rights created by this Agreement, which creates only a revocable license in the Livery Stable. The City and the Contractor do not by this instrument intend to create a lease, easement or other real property interest. The Contractor will have no real property interest in the Livery Stable. The Contractor's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. The Contractor's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Livery Stable. Despite the preceding sentence, the City will provide to the Contractor during the term of this Agreement peaceable use and enjoyment of the Livery Stable in accordance with the terms of this Agreement. The Contractor's rights are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, having jurisdiction over the Livery Stable or Contractor's use of the License area.

13.0 INSURANCE

This Agreement contains the Standard Acord Certificate.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated will result in rejection of your certificate and delay in Agreement execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Agreement number will be subject to rejection and returned or discarded.

13.1 Insurance Representations and Requirements

13.1.1 General: Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Contractor, Contractor must purchase and maintain, at its own expense, this Agreement's stipulated minimum insurance with insurance companies properly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Agreement at City of Scottsdale's option.

13.1.2 No Representation of Coverage Adequacy: By requiring the insurance stated in this Agreement, the City of Scottsdale does not represent that coverage and limits will be adequate to protect Contractor. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements required by in this Agreement but has no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Agreement or failure to identify any insurance deficiency does not relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

13.1.3 Coverage Term: All insurance required by this Agreement must be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Agreement.

13.1.4 Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance stating that applicable coverage is in force and contains the required provisions for the 3 year period.

13.1.5 Policy Deductibles and or Self Insured Retentions: The policies stated in these requirements may provide coverage which contain deductibles or self insured retention amounts. Any deductibles or self insured retention are not applicable to the policy limits provided to City of Scottsdale. Contractor is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Contractor to secure payment of any deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

13.1.6 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Agreement protecting City of Scottsdale and Contractor. Contractor will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

13.1.7 Evidence of Insurance: Before beginning any work or services under this Agreement, Contractor must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Agreement and provide the required coverage, conditions, and limits of coverage and that any coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but any acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above cited policies expire during the life of this Agreement, it will be Contractor's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates will specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. Contractor's insurance must be primary insurance as respects performance of subject Agreement.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
4. Certificate must cite 30 day advance notice of cancellation provision or 10 day notice of cancellation for non-payment of premium.

13.2 Required Coverage

13.2.1 Commercial General Liability: Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from livery stable, operations, independent Contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

13.2.2 Vehicle Liability: Contractor must maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Contractor's owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess insurance is utilized to fulfill the

requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this Agreement, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage.

13.2.3 Workers Compensation Insurance: Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

14.0 SEVERABILITY AND AUTHORITY

14.1 SEVERABILITY

If any term or provision of this Agreement is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Agreement will remain in full force and effect and that term or provision will be considered deleted.

14.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

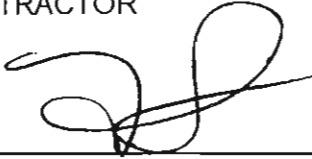
15.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Before any Agreement payment being made, an I.R.S. W-9 Form **must** be completed and submitted to the following address identified below.

This W-9 form is available from the IRS website at www.IRS.gov under their forms section.

City of Scottsdale
Accounts Payable Division
7447 E. Indian School Rd.
Scottsdale, AZ 85251

CONTRACTOR



Terri Todd, a single woman
Dba Scottsdale Horse and Carriage

CITY OF SCOTTSDALE

W. J. "Jim" Lane, Mayor

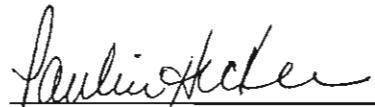
ATTEST:

Carolyn Jagger, City Clerk

REVIEWED BY:

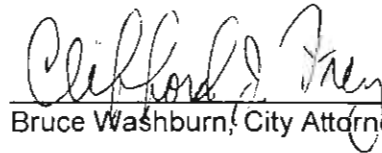


Asset Management Coordinator



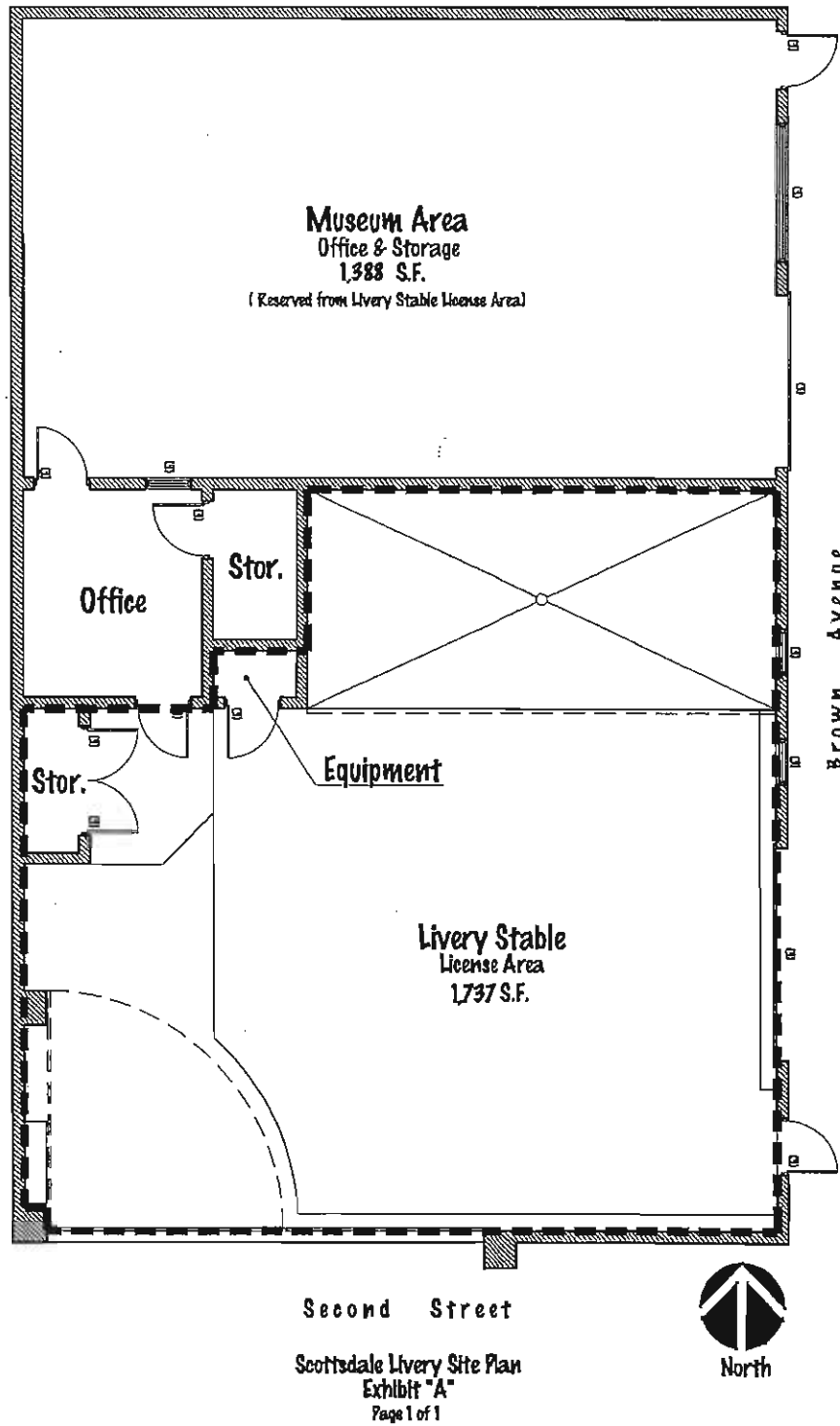
Pauline Hecker
Risk Management Director

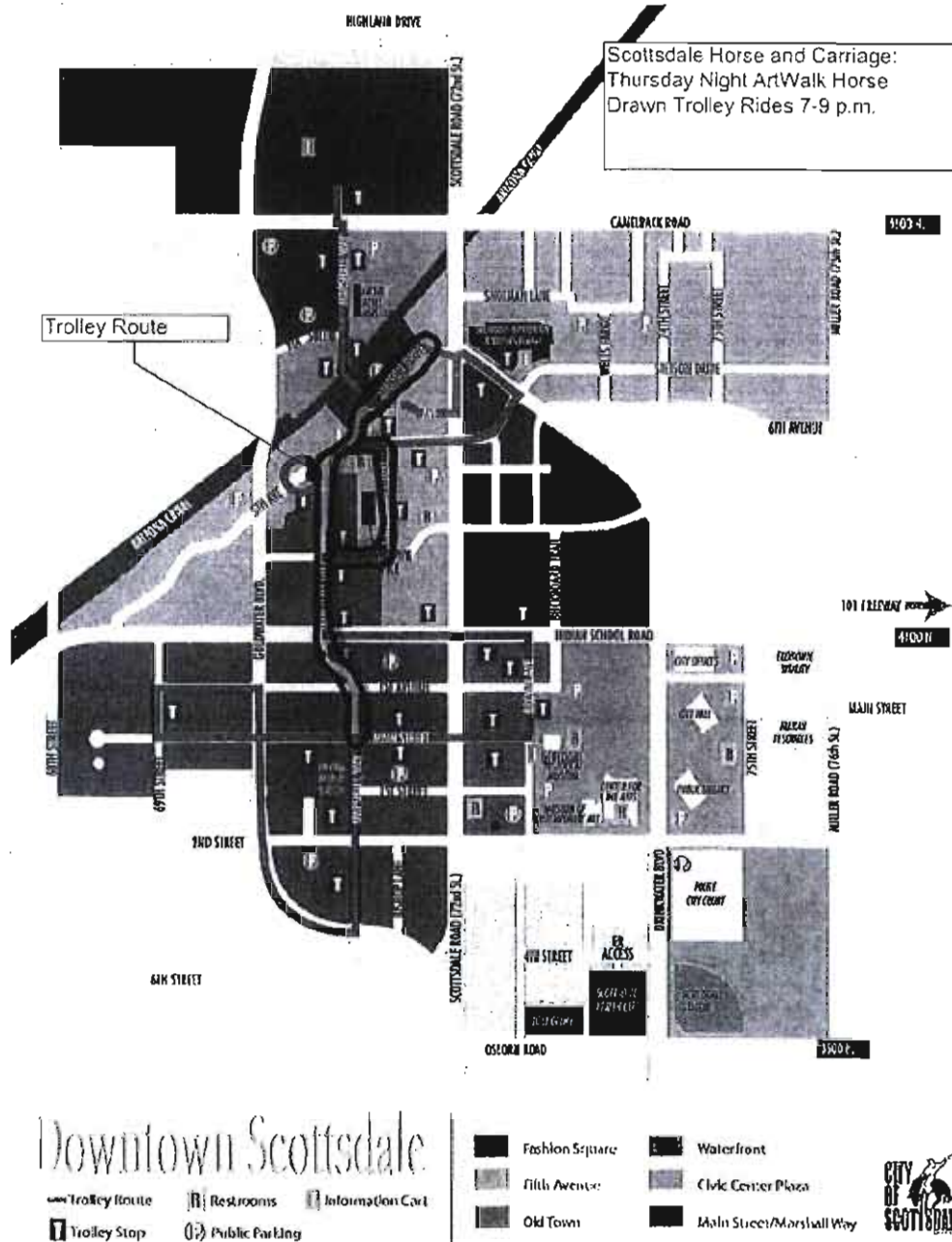
APPROVED AS TO FORM:

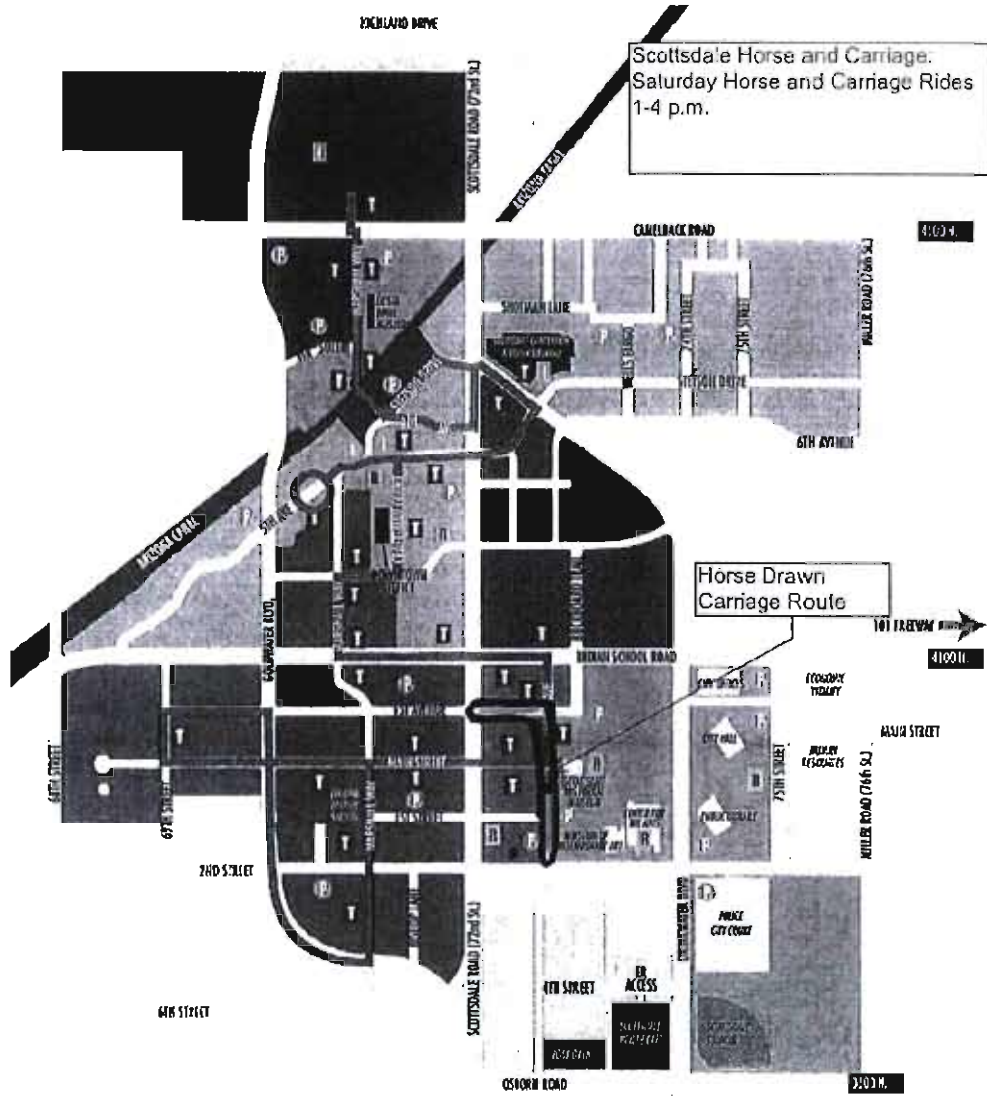


Bruce Washburn, City Attorney

By: Clifford J. Frey
Senior Assistant City Attorney







Downtown Scottsdale

- Trolley Route
- Restrooms
- Information Cart
- Trolley Stop
- Public Parking

- Fashion Square
- Fifth Avenue
- Old Town
- Waterfront
- Civic Center Plaza
- Main Street/Marshall Way



Exhibit C